

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.1718 OF 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JP BHAVSAR

Versus

STATE BANK OF INDIA

Appearance:

MR S TRIPATHY for Petitioner
MR GN DESAI for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/08/96

ORAL JUDGEMENT

Learned advocates Mr.Tripathy appearing for the petitioner and Mr.G.N.Desai, for the respondent are absent.

2. The petitioner by preferring this petition has claimed right to subsistence allowance after his

conviction by a Criminal Court and he challenges the order of dismissal made pursuant to such conviction. The facts leading to the present petition are as under :

The petitioner at the relevant time was serving as Branch Manager at Pratappura Branch under the respondent herein. A Criminal complaint was lodged against the petitioner by the Central Bureau of Investigation under Section 161 of Indian Penal Code and u/Ss.5(2) and 5 (1) (d) of the Prevention of Corruption Act, 1947. Pursuant to the said complaint, the petitioner was suspended from service in the month April, 1984. During the period of his suspension, the petitioner was paid subsistence allowance in accordance with the rules of the respondent-Bank. By the judgment and order dated 2-9-1985, the learned Special Judge, Ahmedabad convicted the petitioner and sentenced him to undergo rigorous imprisonment for 1 year and imposed a fine of Rs.1,000/-. Pursuant to the aforesaid order of conviction, under order dated 6-9-1985 the petitioner was dismissed from service. In view of his dismissal from service, the payment of subsistence allowance to the petitioner was stopped with effect from October, 1985. The petitioner feeling aggrieved has preferred the present petition and has contended that the petitioner has preferred an appeal against the order of his conviction and pending the appeal, the petitioner could not have been dismissed from service. He has further contended that pending the appeal against the conviction, the petitioner ought to be given subsistence allowance in accordance with rules. He has also submitted that even if the petitioner is required to be dismissed from service, the petitioner is required to be served with a notice to show cause why his service should not be terminated. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of State of Maharashtra V. Chandrabhan (A.I.R. 1983 SC, P.803). He has also contended that rule 50 (7) (i) and rule (50) (7) (ii) of State Bank of India (Supervising Staff) Service Rules are arbitrary, unguided and unconstitutional.

3. The claim made by the petitioner has been contested by the respondent-Bank by filing its counter affidavit. It has been pointed out that the petitioner is governed by the State Bank of India (Supervising Staff) Service Rules as well as the State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979. Upon perusal of the provisions contained in above referred rule 50 (7) (i) and 50 (7) (ii) of the State Bank of India (Supervising Staff)

Service Rules and Order 20 of the State Bank of India Officers (Determination of Terms and Conditions of Service) Order,1979 it is apparent that Order 20 deals with the terms and conditions of service. However, the said order does not specifically deal with the disciplinary action to be taken against the employee of the Bank or a delinquent or a person who is convicted in a Criminal Case, while rules 50 (7) (i) and 50 (7) (ii) specifically deal with disciplinary action to be taken against the employee of the Bank who has been convicted by the Criminal Court of an offence involving moral turpitude. Neither of the said rules provides for an opportunity of hearing employee concerned before making an order of penalty against him. In view of the principle laid down in the judgment of the Hon'ble Supreme Court in the matter of Hari Pada Khan V. Union of India (A.I.R. 1996) Supreme Court,P.1065 and in view of the provisions contained in the above referred rules 50 (7) (i) and 50 (7) (ii), the action of the respondent-Bank terminating the service of the petitioner without affording him an opportunity of hearing cannot be said to be illegal in any manner. The contention of the petitioner therefore, requires to be rejected.

4. Since the petitioner has been dismissed from service on 6-9-1985, his claim for payment of subsistence allowance also requires to be rejected. I have also verified records of this court. The Criminal Appeal No.862 of 1985 preferred by the petitioner against the order of his conviction has been dismissed on 18th February,1992. The judgment of the Hon'ble Supreme Court in the matter of State of Maharashtra V. Chandrabhan (Supra) shall have no applicability on the facts of the present case.

5. In the premises aforesaid petition is dismissed. Rule is discharged with cost. Advocate's fees for the purpose of cost is quantified at Rs.2,500/-.

Date : 21-8-1996. (Miss R.M.Doshit,J.)

